

EXHIBIT A
AFFIDAVIT DATED DEC. 22, 2021
BY
CHARLES J. ATCITY

AFFIDAVIT OF CHARLES J. ATCITY

STATE OF ARIZONA

MARICOPA COUNTY

I, Charles J. Atcity, hereby affirm the following:

1. I am the Plaintiff in *Charles J. Atcity v. United States of America*, No. 1:20-cv-00515-JB-SMV, in New Mexico Federal District Court. My case involves medical malpractice claims under the Federal Torts Claims Act (FTCA) against the Kayenta Health Center (KHC), Indian Health Service (IHS) Kayenta Service Unit (KSU) for negligent medical care provided to me by KHC contract physicians (which includes three medical doctors one doctor of osteopathy) from July 6, 2016 through September 6, 2016. Due to the failure of the KHC physicians and other medical staff to provide appropriate medical examination, diagnosis, treatment and care. I suffered permanent physical injury and disability, pain and suffering damages, years of life potentially lost, loss of consortium, economic and non-economic harm as a result of this negligence treatment.
2. As part of the FTCA administration claim process that was initiated on July 5, 2018, I filled out, signed and submitted the Standard Form 95 (SF 95) along with a supporting affidavit and other evidence and information concerning my FTCA administration claim. An amended SF 95 submission was filed via registered U.S. Postal Service on January 15, 2019, which included my Affidavit dated November 19, 2019 to supplement, clarify and correct certain information and details contained in my July 5, 2018 SF 95 submission.
3. My July 5, 2018 SF 95 submission and my amended SF 95 submission dated January 15, 2019 were submitted as part of my Initial Rule 26 Disclosures, and my November 19, 2018 Affidavit can be located at Bates Nos. 01183-01191. I hereby incorporate by reference said Affidavit.

4. Based on advice of counsel, I agreed on the need to hire a medical expert in support of my medical malpractice claims against the KHC doctors and staff who treated me in July-September 2016. My physician expert is Dr. Heidi Miller, based in St. Louis, Missouri.

5. I am 64 years old. I am a graduate of the United States Military Academy at West Point. I served America in the U.S. Army stationed in West Germany for four years during the Cold War.

6. I am an enrolled member of the Navajo Nation, and I served America as a civilian employee of the Indian Health Service (IHS) for over 26 years.

7. I served as an IHS Engineer and Facilities Manager at the Northern Navajo Medical Center (NNMC) in Shiprock, NM. I had additional duties at NNMC, including Safety Commission Chair and Equal Employment Opportunity Officer. Subsequently, I served as the Administrative Officer (AO) at KSU. In addition, I served as the only Level II Contracting Officer's Representative (COR) at KSU, which was an additional duty. The National Institutes of Health Office of Management website (visited 12/21/2021) describes a COR as follows:

A Federal employee to whom a Contracting Officer has delegated authority in writing to act as his or her representative in monitoring specified aspects of contractor performance. These aspects may include ensuring that the contractor's performance meets the standards set forth in the contract, ensuring the contractor meets the technical requirements under the contract by the delivery date(s) and/or within the period of performance, and ensuring that the contractor performs within the price or estimated cost stated in the contract.

8. During the years prior to my 2016 illness, injuries, and surgeries, I received training as a Level II COR and became familiar with the contracts needed to operate the KHC. There was difficulty recruiting and retaining medical staff because KHC is rural and remote.

9. In my capacity as KSU AO and Level II COR, I was familiar with and I ensured contract compliance with respect to contract physicians in terms of hours, schedules, and logistics at KHC.

10. The contract physicians at KHC worked under the oversight and supervision of the Clinical Director, who was an IHS employee. The contract physicians were required to perform their duties directly, and did not have an option to subcontract their duties or services.

11. All physicians at KHC were scheduled by the IHS Clinical Director and staff. The contract physicians used the facility equipment and acted in the capacity of employees. The contract physicians filled out time forms for payroll, and I signed off on them in my capacity as the Level II COR.

12. I recall from my COR service that IHS provided administrative and medical supervision of KHC contract physicians through IHS employees, namely the IHS Clinical Director, and that contract physicians were covered by the FTCA the same as IHS employees pursuant to agency practice and pursuant to contract. IHS employees and contractors were given the same orientation and training, used the same IHS facilities and equipment, had the same credentialing process for access to facilities, computers, patient electronic health records, and equipment.

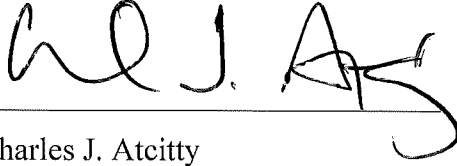
13. Again, my recollection from my COR duties is that the reason that it was necessary for IHS KSU to cover contract physicians under the FTCA was because it was difficult to recruit trained medical professionals to such a remote rural health care facility and a requirement for individual medical malpractice insurance would have added an additional logistical burden for contract physicians, making recruitment that much more difficult.

14. KHC explains the oversight of their operations on their website to include: Kayenta Chief Executive Officer, Administrative Officer, and Clinical Director, Chief Nurse Executive, and Director of Quality Management.

15. When I worked at the KSU, the KHC physicians, whether IHS employees or physicians under contract, were treated the same for scheduling, supervision, use of facilities, equipment and credentialing.

16. The information in this Affidavit is factual and based on my knowledge, recollection and experience from working with the IHS Kayenta Service Unit as Administrative Officer and Level II COR.

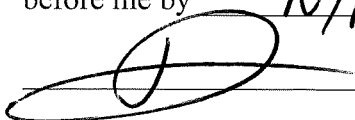
FURTHER AFFIANT SAYETH NAUGHT


Charles J. Atcitty

STATE OF ARIZONA)
) ss.
County of MARICOPA)

NOTARY PUBLIC

Subscribed, sworn to, and acknowledged before me, the undersigned Notary Public, by
Charles Atcitty, the principal, and subscribed, sworn to, and acknowledged
before me by N/A, witness, this 22nd day of December 2021.

 Notary Public

